

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Authorize the City Manager to sign the Service/Maintenance Agreement for current police computerized information systems with Data 911 and authorize payment using funds previously approved in the 2002-2003 police budget (\$44,502.40) (PD)

DATE: October 16, 2002

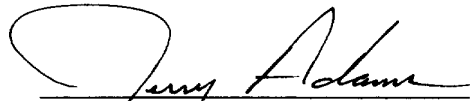
PREPARED BY: JERRY J. ADAMS, CHIEF OF POLICE

RECOMMENDED ACTION: That the City Council authorize the City Manager to sign the Service/Maintenance Agreement for current police information systems with Data 911 and authorize payment of this agreement allowing current application version upgrades/updates.

BACKGROUND INFORMATION: Over the past three years the Lodi Police Department has purchased new computer systems from Data 911 consisting of Computer Aided Dispatch, Records Management System, Report Writing, and Mobile Data Computers. With the systems now in place, a maintenance agreement is needed to provide for receiving software upgrades/updates no longer covered under warranty. This maintenance agreement will expire on June 30, 2003. This is an annual agreement and will be included in future police department budgets.

City Attorney Randall Hays has approved the Data 911 Service/Maintenance Agreement as written and the document has also been reviewed by Steve Mann, Information Systems Manager.

FUNDING: \$44,502.40 from 2002-2003 Police Operating Budget, Line Item #335.


Jerry J. Adams
Chief of Police

cc: City Attorney

APPROVED: _____


H. Dixon Flynn -- City Manager

LODI POLICE DEPARTMENT

Memorandum

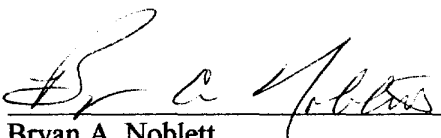
To: Chief Jerry Adams
From: Lieutenant Bryan Noblett
Date: October 1, 2002

Subject: DATA 911 ESA Recommendation
.....

I have met with Corporal Amin and Mike Roil, the Director of Software Development for DATA 911 and I have determined that DATA 911 has met our agency requirements with respect to initial implementation of hardware and software systems as promised. It is therefore my recommendation that we move into the ESA (Software Enhancements and Services Agreement) phase of the project by paying the amount invoiced by DATA 911.

The ESA amount for fiscal 2002-2003 is \$44,502.40 and this total is explained in a letter from Mr. Roil which is attached to this memorandum. The requested funds were previously approved in the 2002-2003 police budget.

Please do not hesitate to contact me if you have any questions or require any clarification on any of this material.


Bryan A. Noblett
Lieutenant

Data911™



September 27, 2002

Lt. Brian Noblett
Lodi Police Department
230 West Elm Street
Lodi, CA 95240

Dear Lieutenant Noblett,

Data911 is pleased to present to you the final versions of the Data911/Lodi Police Department 2002-2003 Software Enhancements and Services Agreement (ESA) and Mobile Data System (MDS) Extended Warranty Agreement.

The software ESA reflects a total amount of \$64,502.40 for services rendered 2002-2003. This amount, however, will be reduced by the amount of \$20,000 as a result of a discounting agreement presented to Lodi PD by Data911 during the 6/4/02 meeting at your agency. As a result, the final amount Data911 will invoice Lodi PD will be \$44,502.40 which also includes \$2,250.00 and \$3,780 for the recent successful delivery of RMS/RPW Server and Client (please refer to enclosed email 9/25/02 from Corporal Bobby Amin).

The MDS extended warranty agreement reflects 7/01/02-6/30/03 support for 22 MDS units with a total cost of \$5,280. For the following year, the total cost will increase by \$480 to support the addition of two MDS units that are currently under the manufacturers warranty.

We've had a very good relationship with the Lodi Police Department to date and with these signed agreements, we at Data911 are very excited to continue that relationship and look forward to providing you with top notch Data911 support services.

Thank you,

Mike Roil

Director of Software Development
Data911

SOFTWARE ENHANCEMENT AND SERVICES AGREEMENT

This Agreement is made as of _____ (Agreement Date) at Alameda, California, by and between Hubb Systems, LLC DBA Data911 and the City of Lodi (Client).

1. SOFTWARE. Subject to the terms and conditions set forth in this Agreement, Data911 shall provide services hereinafter described with respect to Client's application software identified in Exhibit "A".
2. PAYMENT. Client shall pay Data911 for services rendered as specified in Exhibit "A". Payment shall be made directly to Data911 as specified in Exhibit "A". Data911 shall submit all billings for said services to Client in the manner specified in Exhibit "A".
3. EQUIPMENT. Data911 shall, at its sole cost and expense, provide tools and equipment which may be required for furnishing services pursuant to this Agreement.
4. SERVICE. Data911 offers this software enhancement and services agreement and promises to provide the services detailed in Exhibit "B".
5. TERM. Upon signature of this Agreement and payment as required in Exhibit "A" of this Agreement, the Agreement will be in full force and effect through the Agreement expiration date as described in Exhibit "A".
6. EXHIBITS. All exhibits referred to herein are attached hereto and are by reference incorporated herein as though set forth in full. Exhibit "A" includes a complete list of the software modules, fees for services, charges, commencement date, term of service, billing procedures and payment methods, which shall be covered under this agreement. Exhibit "B" Statement of Work details the services to be performed, non-chargeable services and chargeable services. Exhibit "C" refers to General Terms and Conditions of this Agreement.

EXECUTED as of this day first above-stated.

H. Dixon Flynn
City Manager

Attest:

Susan J. Blackston
City Clerk

Approved as to Form:

Randall A. Hays
City Attorney

Data 911 Representative

EXHIBIT A

I. SOFTWARE MODULES – SCHEDULE OF FIXED ANNUAL RETAINER FEES - Data911 Software

Item	Description	Number of Licenses	Annual Fee
1	Cad Server	1	3,600.00
2	Cad Client (1 st)	1	9,000.00
3	Cad Client	2	9,000.00
4	Ecomm Server	1	3,600.00
5	Ecomm Client	3	810.00
6	Rms/Rpw Server	1	2,250.00
7	Rms/Rpw Client	7	3,780.00
8	Msg Server	1	5,400.00
9	Mx Client	23	2,142.25
10	Rx Server	1	5,400.00
11	Rx Client	23	7,129.27
12	Interface DOJ	1	2,700.00
13	Interface 911	1	2,700.00
Total Annual Fee			57,511.52

The Retainer/support fees are due annually at the beginning of Client's Fiscal Year, based upon the above Schedule of Fees.

II. THIRD PARTY SOFTWARE – SCHEDULE OF FEES

Item	Description	Number of Licenses	Annual Fee
1	Oracle Server	1	5,700.00
2	Oracle Lite 8i	23	1,748.00
3	VMS O/S	1	860.00
4	Hummingbird NFS	1	150.00
Total Annual Fee			8,458.00

III. FEES FOR SERVICE

1. Fixed Annual Retainer Fee. Client shall pay Data911 the annual retainer fee, in the amount shown on Exhibit A, which will be billed and payable within 30 days following approval of Client's annual budget.
2. Fees based on time. All services requested by Client, which are not provided under the terms of this agreement shall be billed at Data911's then current rate. All amounts so billed shall be payable within 30 days after the invoice date.

3. This agreement shall cover only application software modules described in Exhibit A hereto attached which were designed and/or installed by Data911 and which have not and will not be altered or enhanced by any entity (including Client) without the express prior written consent of Data911, such consent not to be unreasonably withheld. In the event of Client's use of additional application software designed and installed by Data911 or if additional hardware is connected or in any way interfaced to Client's computer system as described in Exhibit "A", Data911 shall have the right to increase its fixed retainer fee and such increase shall be retroactive to the date of such respective first use or connection. Client shall give Data911 prompt written notice of any such connection.
4. In addition to the amounts payable by Client above, Client shall pay to Data911 all taxes and levies imposed on or with respect to this Agreement, the services performed or the fees paid hereunder (except for taxes based on net income).
5. Support fees for third party products billed on to the Client and payable as per the third party suppliers arrangements. These amounts and arrangements are shown on Exhibit A.

IV. PRICE CHANGES

Total price subject to change upon 1st anniversary date of this Agreement, upon the addition or deletion of software and hardware, or thereafter the anniversary date, upon 90 days written advance notice.

V. COMMENCEMENT DATE

Commencement date shall be 1st July 2002.

Inclusion of a newly installed module shall be invoiced to Client the first month following the module acceptance by Client. In subsequent "contract" years the additions will be included in the Schedule of Fees. Invoicing for a newly installed module and for contracts commencing other than the Client's fiscal year shall reflect the formula of monthly equivalent fee for the module multiplied by the remaining number of months in the "contract" year.

VI. TERM

1. The term of this Agreement shall be for twelve months (a "contract" year) commencing on the date specified on Exhibit A hereto and shall continue from year to year thereafter, but shall be terminable by either party at the end of any contract year upon written notice given thirty days prior to the end of any contract year.
2. This Agreement may be terminated by either party upon ten days notice to the other in the event of any material default hereunder by the other party.
3. This Agreement may be terminated by Data911 if the application software is altered or enhanced by any entity (including Client) other than Data911, anything to the contrary herein notwithstanding.

4. No termination hereunder shall release Client from its obligation to make payment for services rendered through the date of termination.

VI. Billing Procedures and Payment Method

1. Client shall pay Data911 for services rendered based on the costs and terms as specified. Payment shall be made directly to Data911 for services rendered pursuant to this Agreement. Data911 shall submit an invoice for said services to Client at the address listed below:

Lt. Brian Noblett
Lodi Police Department
230 West Elm Street
Lodi, CA 95240

EXHIBIT B

I. SERVICES TO BE PERFORMED

Data911 agrees to provide Client during the term of this Agreement, under the fees scheduled herein and subject to the provisions set forth below, the services hereinafter described with respect to Client's application software.

1. For Data911 Software Products, a two-hour response time during normal business hours (Monday – Friday, 0900 – 1700) for emergency support requests. An emergency is defined as an application failure of the software defined in Exhibit A. Response is defined as the point in time when Data911 begins diagnosis of the reported problems. Client shall use the method of communication that is identified by Data911 for emergency service requests. Modem on-line software technical support service shall be used when applicable. Data911 shall provide 24-hour response time for on-site software emergency service, when required. Travel and accommodations charges incurred will be billed to Client.
2. Provision of media and for all new releases/modifications to the software modules listed in Exhibit A at no additional cost to Client. Installation, conversion of data, and training will be charged at a quoted hourly/not to exceed rate at the election of Client.
3. Telephone consultation regarding:
 - (a). Questions related to public safety data practices and procedures.
 - (b). System administration consultation and assistance; e.g. paper flow and retention.
 - (c). Exceptions to Standard Procedures.
 - (d). Modification of Client's computer software or purchase of additional hardware.

II. NON-CHARGEABLE SERVICES

1. There shall be NO CHARGE for any new releases or enhancements to Data911's Software as provided to all its clients under Enhancement and Service Agreements.

III. CHARGEABLE SERVICES

1. Items listed below are not under Data911's control, and are therefore chargeable. Client will be billed at Data911's then-current rate or a fixed charge to be agreed upon.

Examples:

- (a). Recovery of lost data caused by Hardware or operator error.
- (b). Assistance with Word Processing and/or other software, including Operating System software, not written by Data911.
- (c). Assistance due to User failure to follow prescribed procedures or exercise normal care in data processing.
- (d). Research, review, and revision of operational work.
- (e). Upgrading of Client hardware system, new operating system and data conversion.
- (f). Re-training on modules already operational.
- (g). Additional copies of software documentation.
- (h). Installation or interfacing of additional hardware, software, and upgrades.
- (i). Cabling.

* **Data911 time is chargeable in 15 minute increments for chargeable services requested/completed during normal business hours.**

* **A minimum charge of 1 hour applies for all chargeable services requested/completed during non-business hours.**

* **Travel and accommodations charges for on-site service calls will be billed to Client.**

EXHIBIT C

I. GENERAL

1. Data911 shall have full, Client controlled, access to Client's computer system for purposes of performing its obligations under this Agreement. A 2400 Baud Modem, and supporting telephone facility and services is to be supplied by the Client.
2. Custom programming for Client or special program modifications are not included under this agreement.
3. At all times during the term of this Agreement, Data911 shall be an independent contractor and shall not be an employee of Client. Client shall have the right to control Data911 only insofar as the result of Data911's services rendered pursuant to this Agreement; however, Client shall not have the right to control the means by which Data911 accomplishes services rendered pursuant to this Agreement.
4. Data911 shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Data911's obligations pursuant to this Agreement.

Neither Data911 nor Client shall be liable to the other for any delay or failure in performance on their respective obligations, other than the obligation to pay any monies to the other party when such monies are due and payable, as a result of an event of force majeure. For the purpose of this section, events of force majeure are defined to be (a) any act, delay, or failure to act on the part of any governmental authority, (b) acts of God, (c) accident or disruption caused by fire or explosion, (d) any act, delay, or failure to act on the part of any subcontractor of Data911, or (e) labor difficulties such as strikes or slowdowns; in all cases, the occurrence of which is beyond the reasonable control, and not caused by the negligence of, the party claiming an excuse for its delay or failure in performance. The time for performance shall be extended for a period equal to the period during which the event of force majeure, as described in this section, prevented performance. Notwithstanding any implication to the contrary herein, no event of force majeure shall excuse Data911 from its obligation to provide any hardware, software or services to the extent it may obtain such hardware, software or services from a source other than the source, including its subcontractors, it originally intended to use in sufficient quantity and within sufficient time to meet such obligations at no material additional expense.

5. Data911 shall have no liability whatsoever for general damages, extraordinary costs, loss of profits, or incidental, indirect, special or consequential damages (even if it has been apprised of the likelihood thereof) arising out of or in connection with Data911's obligations or performance hereunder or any breach hereof. In the event of Data911's material breach of this Agreement, Client may cancel this Agreement and refuse to pay Data911's invoice for the particular service which is the immediate subject of the breach, such rights being the sole

and exclusive remedies available to Client. Delay or failure of performance by Data911 shall not constitute a breach hereunder where the same is due to any cause or condition beyond Data911's reasonable control.

Data911 shall not be responsible for, and Client shall indemnify, defend and hold harmless Data911 from and against, and release Data911 from any claim by it with respect to, any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees) and liabilities of, by or with respect to third parties, to the extent such arise from Client's negligence or willful misconduct.

6. Client shall be responsible for ensuring that all of its files are adequately duplicated on a current basis ("backed-up" as used in the trade) in accordance with the highest and most up-to-date standards of the computer industry and Client shall indemnify Data911 against Client's failure to do so.
7. Should Data911 deem it necessary to refer the enforcement of its right to payment hereunder to its attorneys, Client shall pay such attorneys' reasonable fees and expenses and costs of suit.
8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors and assigns.
9. Equal Employment Opportunity - During the performance of this Agreement, Data911 agrees as follows:
 - A. Data911 will not discriminate against any employee or applicant for employment because of race, color, religion, or national origin. Data911 will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Data911 agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - B. Data911 will, in all solicitations or advertisements for employees placed by or on behalf of Data911 state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
 - C. Data911 will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to contracts or subcontracts or standard commercial supplies or raw materials.
10. Data911 AS AGENTS - Except as Client may specify in writing, Data911 shall have no authority, express or implied, to act on behalf of Client in any capacity whatsoever as an agent. Data911 shall have no authority, express or implied, pursuant to this Agreement to

bind Client to any obligation whatsoever.

11. CHANGES - The Client may, from time to time, request changes in the Scope of Services of the Agreement to be performed hereunder. Such changes including any increase or decrease in the amount of Data911's compensation, which are mutually agreed-upon by and between the Client and Data911, shall be incorporated in written amendments to this Agreement.
12. This Agreement shall be construed and enforced in accordance with the laws of the State of California.
13. Data911 shall not be held to have waived any of the provisions hereof for failure to invoke any of the remedies available to it in the event of any breach by Client of this Agreement. The waiver by Data911 of any provision of this Agreement shall not be deemed to be a waiver of any such provision on any subsequent breach of any other provisions.
14. All notices required or permitted to be given by either party to the other hereunder shall be in writing, sent by U.S. mail, postage prepaid, addressed to the other party at the address for it first above mentioned or to such other place as may have been given by similar notice by such other party. All notices shall be deemed given when properly posted except notice of change of address which shall be deemed given when received.
15. This instrument constitutes the complete and exclusive statement of the agreement between the parties and supersedes all contemporaneous and previous agreements and communications, oral or written, between the parties with respect to the subject matter of this Agreement. Any statement, agreement, representation or other communication or expression not contained herein is without authorization of, and shall not be binding on Data911. This Agreement may not be modified or supplemented except by an instrument duly executed on behalf of the then parties bound hereby including, if the same is a corporation, only by an officer thereof.

MDS Extended Warranty Agreement

This Agreement is made as of _____ (Agreement Date) at Alameda, California, by and between Hubb Systems, LLC DBA Data911 and the City of Lodi (Client).

1. **HARDWARE.** Subject to the terms and conditions set forth in this Agreement, Data911 shall provide maintenance and repair service for the hardware described in Exhibit "A".
2. **PAYMENT.** Client shall pay Data911 for services rendered as specified in Exhibit "B". Payment shall be made directly to Data911. Data911 shall submit all billings for said services to Client in the manner specified in Exhibit "A".
3. **FACILITIES AND EQUIPMENT.** Data911 shall, at its sole cost and expense, furnish all facilities, tools and equipment, which may be, required for furnishing hardware repair services pursuant to this Agreement.
4. **SERVICE.** Data911 offers this full service hardware maintenance agreement and promises to provide the services detailed in Exhibit "B" Statement of Work. Services include the repair of hardware submitted under this contract and specified in the equipment list and will include all parts and labor subject to the conditions outlined herein.
5. **TERM.** Upon signature of this agreement and payment for the Extended Warranty Agreement, the Agreement will be in full force and effect through the Extended Warranty Expiration date for each unit as described in Exhibit "A".
6. **EXHIBITS.** All exhibits referred to herein are attached hereto and are by reference incorporated herein as though set forth in full. Exhibit "A" includes a complete list of the equipment, costs, term of service, contract term, billing procedures and payment methods, which shall be covered under this agreement. Exhibit "B" details the Services rendered, the RMA procedure, and the parts and labor availability. Exhibit "C" refers to General Terms and Conditions.

EXECUTED as of this day first above-stated.

H. Dixon Flynn
City Manager

Attest:

Susan J. Blackston
City Clerk

Approved as to Form:

Randall A. Hays
City Attorney

Data 911 Representative

EXHIBIT A

I. Maintenance Equipment List, Contract Term, Price Schedule.

<u>MDS Unit Serial #</u>	<u>Annual Extended Warranty Price/Unit</u>	<u>Contract Term/Unit</u>
1535	\$240/yr	07/01/02 – 06/30/03
3968	\$240/yr	07/01/02 – 06/30/03
4740	\$240/yr	07/01/02 – 06/30/03
4741	\$240/yr	07/01/02 – 06/30/03
4742	\$240/yr	07/01/02 – 06/30/03
4743	\$240/yr	07/01/02 – 06/30/03
4744	\$240/yr	07/01/02 – 06/30/03
4745	\$240/yr	07/01/02 – 06/30/03
4746	\$240/yr	07/01/02 – 06/30/03
4747	\$240/yr	07/01/02 – 06/30/03
4748	\$240/yr	07/01/02 – 06/30/03
4749	\$240/yr	07/01/02 – 06/30/03
4777	\$240/yr	07/01/02 – 06/30/03
4778	\$240/yr	07/01/02 – 06/30/03
4779	\$240/yr	07/01/02 – 06/30/03
4780	\$240/yr	07/01/02 – 06/30/03
4781	\$240/yr	07/01/02 – 06/30/03
4782	\$240/yr	07/01/02 – 06/30/03
4783	\$240/yr	07/01/02 – 06/30/03
4784	\$240/yr	07/01/02 – 06/30/03
4785	\$240/yr	07/01/02 – 06/30/03
4786	\$240/yr	07/01/02 – 06/30/03
7658	Initial Warranty No Charge	07/01/02 – 06/30/03
7659	Initial Warranty No Charge	07/01/02 – 06/30/03
	<u>Total Cost: \$5,280</u>	

II. Term

1. The term of this Agreement shall be for twelve months (a "contract" year) commencing on the date of this Agreement and shall continue from year to year thereafter, but shall be terminable by either party at the end of any contract year upon written notice given thirty days prior to the end of any contract year. This Agreement shall be in full force and effect only upon final execution of this agreement, payment and receipt thereof by Data911 at 2021 Challenger Drive, Alameda, CA 94501

2. This Agreement may be terminated by either party upon ten days notice to the other in the event of any material default hereunder by the other party.
3. This Agreement may be terminated by Data911 if the Mobile Data Systems supported are altered or enhanced by any entity (including Client) other than Data911, anything to the contrary herein notwithstanding.
4. No termination hereunder shall release Client from its obligation to make payment for services rendered through the date of termination.

III. Billing Procedures and Payment Method

1. Client shall pay Data911 for services rendered based on the costs, equipment and terms as specified. Payment shall be made directly to Data911 for services rendered pursuant to this Agreement. Data911 shall submit an invoice for said services with this MDS Extended Warranty Agreement to Client to the address listed below:

City of Lodi
Accounts Payable
Attn: Lt. Brian Noblett
P.O. Box 3006
Lodi, CA 95241-1910

EXHIBIT B STATEMENT OF WORK

I. Services

Services provided are limited to, during the term of this contract, Data911's repair or replacement, at Data911's discretion, of any part or component, which prohibits the proper and normal operation of the Data911 equipment specified in Exhibit "A". Maintenance services include, but are not limited to, all parts and/or labor required to identify the failure and to repair the equipment to guarantee proper working condition of the product returned.

II. Return Material Authorization Procedure

Upon determination that a hardware failure has occurred the client will contact Data911 by telephone at (510) 865-9100 ext. 125 to obtain a Return Material Authorization number. A qualified Data911 technician will provide initial telephone consultation to assist the client in problem analysis and determination, as some problems may be in other layers of the system and therefore will not require the return of a unit.

Equipment is to be removed and returned to the factory, shipping prepaid by Client. Prior to equipment shipment, Client is to call Data911 for a Return Material Authorization (RMA) number. The RMA number is to be clearly marked on shipping label or shipping container. The unit will be repaired and shipped by Data911 back to Client via ground shipping service within 10 business days of receipt. Client is to pay for any expedited return shipping service.

III. Parts and Labor Availability

Data911 will guarantee that for a period of ten years from the time of purchase of new equipment, availability of parts and labor. If parts become unavailable within the ten-year period, Data911 will replace the obsolete equipment to equivalent functionality at no additional charge.

EXHIBIT C
GENERAL TERMS AND CONDITION

I. General

1. Data911 shall have full access to Client's Mobile Data System computers for purposes of performing its obligations under this Agreement. Data911 shall not be responsible for the application software deployed on computers returned for service, however Data911 will protect and support Clients obligations to third party software licensors when so advised of any obligations Client may have in this regard.
2. Client shall be responsible for ensuring that all of its files are adequately duplicated for reloading on a current basis ("backed-up" as used in the trade) in accordance with the highest and most up-to-date standards of the computer industry, and Client shall indemnify Data911 against Client's failure to do so.
3. Custom hardware development and programming for Client or special program modifications are not included under this agreement, but may be requested and quoted for Client's consideration.
4. Client assures that all units identified by this Agreement are in good working order and condition as of the this Agreement Date.
5. Data911 shall have no liability whatsoever for general damages, extraordinary costs, loss of profits, or incidental, indirect, special or consequential damages (even of it has been apprised of the likelihood thereof) arising out of or in connection with Data911's obligations or performance hereunder or any breach hereof. In the event of Data911's material breach of this Agreement, Client may cancel this Agreement and refuse to pay Data911's invoice for the particular service, which is the immediate subject of the breach, such rights being the sole and exclusive remedies available to Client. Delay or failure of performance by Data911 shall not constitute a breach hereunder where the same is due to any cause or condition beyond Data911's reasonable control.

Data911 shall not be responsible for, and Client shall indemnify, defend and hold harmless Data911 from and against, and release Data911 from any claim by it with respect to, any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees) and liabilities of, by or with respect to third parties, to the extent such arise from Client's negligence or willful misconduct.

6. Should Data911 deem it necessary to refer the enforcement of its right to payment hereunder to its attorneys, Client shall pay such attorneys' reasonable fees and expenses and costs of suit.
7. Equal Employment Opportunity - During the performance of this Agreement, Data911 agrees as follows:

A. Data911 will not discriminate against any employee or applicant or employment because of race, color, religion, or national origin. Data911 will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Data911 agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

B. Data911 will, in all solicitations or advertisements for employees placed on or on behalf of Data911, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

C. Data911 will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to contracts or subcontracts or standard commercial supplies or raw materials.

8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors and assigns.
9. This Agreement shall be construed and enforced in accordance with the laws of the State of California.
10. Data911 shall not be held to have waived any of the provisions hereof for failure to invoke any of the remedies available to it in the event of any breach by Client of this Agreement, and the waiver by Data911 of any provision hereof shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision hereof.
11. The Client may, from time to time, request changes in the Scope of Services of the Agreement to be performed hereunder. Such changes including any increase or decrease in the amount of Data911's compensation, which are mutually agreed-upon by and between the Client and Data911, shall be incorporated in written amendments to this Agreement.
12. In the event that it becomes necessary for either party to this Agreement to bring a legal suit to enforce any of the provisions of this Agreement, the parties agree that a court of competent jurisdiction may determine and fix reasonable attorney fees to be paid the successful litigant.
13. All notices required or permitted to be given by either party to the other hereunder shall be in writing, sent by U.S. mail, postage prepaid, addressed to the other party at the address for it mentioned in this agreement or to such other place as may have been given by similar notice by such other party. All notices shall be deemed given

when properly posted except notice of change of address, which shall be deemed, given when received.

14. This instrument constitutes the complete and exclusive statement of the agreement between the parties and supersedes all contemporaneous and previous agreements and communications, oral or written, between the parties with respect to the subject matter of this Agreement. Any statement, agreement, representation or other communication or expression not contained herein is without authorization of, and shall not be binding on, Data911. This Agreement may not be modified or supplemented except by an instrument duly executed on behalf of the then parties bound hereby including, if the same is a corporation, only by an officer thereof.